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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Mateo Gutierrez Renteria,

Plaintiff,

v.

Commissioner of Social Security  
Administration,

Defendant.

No. CV-23-01940-PHX-JAT

**ORDER**

Pending before the Court is the parties' stipulation to an award of attorneys' fees under the Equal Access to Justice Act ("EAJA"). (Doc. 21).

"A litigant is entitled to attorneys' fees under the EAJA if: '(1) he is the prevailing party; (2) the government fails to show that its position was substantially justified or that special circumstances make an award unjust; and (3) the requested fees and costs are reasonable.' *Carbonell v. I.N.S.*, 429 F.3d 894, 898 (9th Cir. 2005) (citing *Perez-Arellano v. Smith*, 279 F.3d 791, 793 (9th Cir. 2002)); *see also* 28 U.S.C. § 2412(d)(1)(A)."

*Michele M. v. Saul*, No. 19-CV-00272-JLB, 2020 WL 5203375, at \*1 (S.D. Cal. Sept. 1, 2020).

Here, the totality of the parties' discussion regarding Plaintiff's entitlement to fees under the EAJA is: "This stipulation constitutes a compromise settlement of Plaintiff's request for EAJA attorney fees and does not constitute an admission of liability on the part of Defendant under the EAJA or otherwise" (Doc. 21 at 2).

Previously, this Court remanded this case to the social security administration for further proceedings. (Doc. 19). Accordingly, the Court finds that Plaintiff is the prevailing

1 party.

2 Regarding prong two, the Ninth Circuit Court of Appeals has explained:

3 Pursuant to the EAJA, we are required to award [Plaintiff] fees and other  
4 expenses incurred in connection with his civil action unless we find that the  
5 position of the United States was “substantially justified” or that special  
6 circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A).

7 The test for determining whether the Secretary’s position was substantially  
8 justified under the EAJA is whether the position had a reasonable basis in  
9 both law and fact—that is, whether it was justified “to a degree that could  
10 satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565  
11 (1988); *see also Barry v. Bowen*, 825 F.2d 1324, 1330 (9th Cir. 1987). The  
12 burden is on the Secretary to prove that his position was substantially  
13 justified. *Id.*

14 *Russell v. Sullivan*, 930 F.2d 1443, 1445 (9th Cir. 1991).

15 The Government’s stipulation to pay fees, while simultaneously not admitting it  
16 owes fees under the EAJA, is an ambiguous legal position. This case was remanded by  
17 stipulation of the parties (Docs. 18–20), and this Court has never evaluated either party’s  
18 positions. Nonetheless, applying the test as articulated in *Russell*, the Court finds that the  
19 Government has failed to carry its burden to prove that its position was substantially  
20 justified or that special circumstances make an award unjust. *Russell*, 930 F.2d at 1445;  
21 *see also Michele M.*, 2020 WL 5203375, at \*1.

22 Finally, the Court should award only reasonable fees. Here, the Court has not been  
23 provided with a billing statement. Thus, the Court does not know the rate charged or the  
24 hours expended. Nonetheless, the Court finds that the Government, by the stipulation, has  
25 conceded that the amount of fees sought in this case are reasonable.

26 Plaintiff’s counsel states in the stipulation that Plaintiff has signed an assignment of  
27 any award of fees to counsel. The Court has not been provided with a copy of the  
28 assignment. Nonetheless, the Court will accept Plaintiff’s counsel’s representation that  
such an assignment is available in her records for review if this representation is ever  
disputed.

Based on the foregoing,

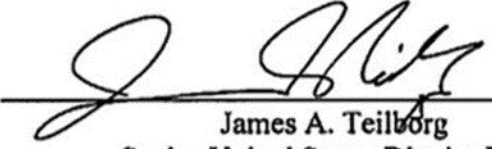
**IT IS ORDERED** granting the stipulation (Doc. 21) such that fees and expenses in

1 the amount of \$3,326.82 as authorized by 28 U.S.C. § 2412, and costs in the amount of  
2 \$402.00 as authorized by 28 U.S.C. § 1920, are awarded to Plaintiff subject to the terms of  
3 the Stipulation.

4 **IT IS FURTHER ORDERED** that if, after receiving this Order, the Commissioner:  
5 (1) determines that Plaintiff does not owe a debt that is subject to offset under the Treasury  
6 Offset Program, and (2) agrees to waive the requirements of the Anti-Assignment Act, then  
7 the check for the fees awarded herein will be made payable to Plaintiff's attorney pursuant  
8 to the assignment executed by Plaintiff. However, if there is a debt owed under the  
9 Treasury Offset Program, the Commissioner cannot agree to waive the requirements of the  
10 Anti-Assignment Act, and any remaining Equal Access to Justice Act fees after offset will  
11 be paid by a check made out to Plaintiff but delivered to Plaintiff's attorney.<sup>1</sup>

12 Dated this 3rd day of April, 2024.

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James A. Teilborg  
Senior United States District Judge

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<sup>1</sup> This award is without prejudice to Plaintiff seeking attorneys' fees under section 206(b) of the Social Security Act, 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA.